

SENATE BILL 2007

By Kyle

AN ACT to amend Tennessee Code Annotated, Title 13,
Chapter 6 and Title 29, Chapter 1, Part 1, relative
to structures unfit for occupation or use.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 13, Chapter 6, is amended by adding
sections 2 and 3 as a new part:

SECTION 2. As used in this part, unless the context requires otherwise:

(1) "Abate" or "abatement" in connection with any building means the removal or
correction of any conditions that constitute a public nuisance and the making of any
other improvements that are needed to effect a rehabilitation of the building that is
consistent with maintaining safe and habitable conditions over its remaining useful life;

(2) "Building" means any building or structure that is not occupied by any owner,
tenants or residents;

(3) "Interested party" means any owner, mortgagee, lien holder or person who
possesses an interest of record in any property that becomes subject to the jurisdiction
of a court pursuant to this part;

(4) "Municipal corporation" means any incorporated city or town in this state, or
county, including any county having a metropolitan form of government, and as further
defined by the population restrictions set forth in § 13-6-105; provided, however, the
provisions of this chapter shall only apply in any county having a metropolitan form of
government which has a population in excess of five hundred thousand (500,000), or in
any county having a population in excess of eight hundred thousand (800,000),
according to the 2000 federal census or any subsequent federal census;

(5) "Nonprofit corporation" means any nonprofit corporation has been duly organized under the laws of this state and has as one of its goals community development or redevelopment;

(6) "Public nuisance" means any vacant building that is a menace to the public health, welfare, or safety, structurally unsafe, unsanitary, or not provided with adequate safe egress, that constitutes a fire hazard, is dangerous to human life, or no longer fit and habitable, a nuisance as defined in § 29-3-101(a)(2), or is otherwise determined by the municipal corporation or local entity having authority to enforce building codes to be as such; and

(7) "Receiver" means a nonprofit corporation appointed by the court for the purpose of preserving or improving the property of another. A receiver appointed pursuant to the section is not personally liable except for misfeasance, malfeasance, or nonfeasance in the performance of the functions of the receiver's office.

SECTION 3.

(a) Any nonprofit corporation, or any interested party or neighbor may bring a civil action to enforce any local building, housing, air pollution, sanitation, health, fire, zoning, or safety code, ordinance, or regulation applicable to buildings against the owner of said building for failure to comply with the ordinance or regulation. The property shall be certified a public nuisance by the municipal corporation or code enforcement entity where the building is located and proof of such certification shall be presented to the court including a list of the reasons for such determination.

(b) The complaint shall include a proposed order of compliance setting forth the relief requested as and may include a request for the appointment of a receiver if an order of compliance is unsuccessful.

(c) In addition to compliance with Rule 4 of the Tennessee Rules of Civil Procedure, notice of a civil action under this part shall require that a copy of the complaint and notice to be posted in a conspicuous place on the building and for such complaint and to be published in a newspaper of general circulation in the municipal corporation where the property is located.

(d) The court shall conduct a hearing in a timely manner, at least twenty-eight (28) days but no later than sixty (60) days after the notice provisions of subsection (c) have been satisfied, including service upon the owner of the building with a copy of the complaint and the notice of the date and time of the hearing.

(e) The civil action will be dismissed if the building is not certified as a public nuisance by the municipal corporation or code enforcement entity where the building is located. It shall constitute a complete defense to any cause of action brought under this part upon proof brought by the owner that failure to maintain the property is due to act of nature, serious illness, or legal barrier.

(f) If the owner cannot establish a complete defense, the court may issue an order of compliance requiring the owner of the building to produce a development plan for the abatement of the public nuisance. The plan shall include, at a minimum: a projected timeline for abatement of the public nuisance; and a statement demonstrating the financial ability of the owner to complete the abatement. The plan shall be duly approved by the court for purposes of compliance with this part. If the owner has commenced work on the building prior to, or during the pendency of the action, the owner shall be required to provide a report of the work that has been completed to date, as well as a development plan for the abatement of the public nuisance.

(g) If the owner fails to comply with the court's order, the court may allow an interested party the opportunity to undertake the work to abate the public nuisance under a development plan as described in subsection (i).

(h) If the above actions fail to abate the public nuisance, the court may appoint a receiver to take possession and control of the building to abate the public nuisance. Prior to being designated a receiver under this subsection (h), the party shall provide the court with the following:

(1) An external verification of nonprofit status;

(2) The nonprofit corporation's articles of incorporation or bylaws evidencing community development or redevelopment is a part of the mission;

(3) Evidence of financial capacity to carry out the proposed redevelopment, including audited financial statements of the organization for the past five years, where applicable;

(4) The organization's formal conflict of interest policy governing both the staff and the board of directors; and

(5) Evidence of the administrative capacity to successfully undertake the proposed project.

(i)(1) Prior to ordering any action to be taken to abate the public nuisance, the court shall cause a more detailed development plan to be submitted for review, which shall include the following:

(A) A detailed budget for abating the public nuisance;

(B) If repair and rehabilitation of the building are found not to be feasible, the cost of demolition of the building or of the portions of the building that constitutes a public nuisance; and

(C) The terms, conditions and availability of any financing that is necessary to abate the public nuisance or a show of sufficient assets.

(2) Any party submitting a detailed development plan under this section shall be required to post a bond in an amount that is no less than the assessed value.

(j) If the court deems the detailed development plan to be sufficient and appropriate the court may empower the receiver to complete any of the following:

(1) Take possession and control of the building and the property on which it is located;

(2) Pay all expenses of operating and conserving the building and the property including obtaining mortgage insurance;

(3) Pay pre-receivership mortgages or installments of them and other liens; and

(4) Implement the detailed development plan, provided that if the development plan requires demolition that the court specifically order such demolition properly and in compliance with applicable laws.

(k) The interested party or receiver shall file a report with the court every sixty (60) days and upon completion of the detailed development plan shall file a final report with the court indicating the public nuisance has been abated. If the court finds the final report as sufficient and complete the court may assess court costs and expenses and also may approve the payment of receiver's fees not to exceed five thousand dollars (\$5,000). These costs as approved by the court order shall be considered a first lien on the property, which, with the exception of those for federal, state, and local taxes and assessments, shall be superior to all prior and subsequent liens or other encumbrances associated with the building or the property. The interested party or receiver shall be responsible for recording a certified copy of the judgment with the county recorder in the

county in which the property is located within sixty (60) days after the date of the entry of the judgment. Once the lien is perfected and the owner has satisfied the lien then the court shall order the receivership terminated.

(l) If the lien is not satisfied within one hundred eighty (180) days, with approval of the court, the municipal corporation in which the building is located may sell the property pursuant to applicable local ordinances.

(m) Upon the sale of a building or the property on which a building is located the municipal corporation shall distribute the proceeds of the sale. The proceeds of the sale shall first satisfy all federal, state, and local taxes and assessments or tax settlements. If the remaining sale proceeds are sufficient to satisfy the receiver's lien then the receivership shall be terminated. If the receiver's lien is not satisfied by the sale proceeds the receiver's lien shall remain in effect until the lien is satisfied.

SECTION 4. This act shall take effect upon becoming a law, the public welfare requiring it.